MCZM REVIEW

1983-1985

MASSACHUSETTS COASTAL ZONE MANAGEMENT

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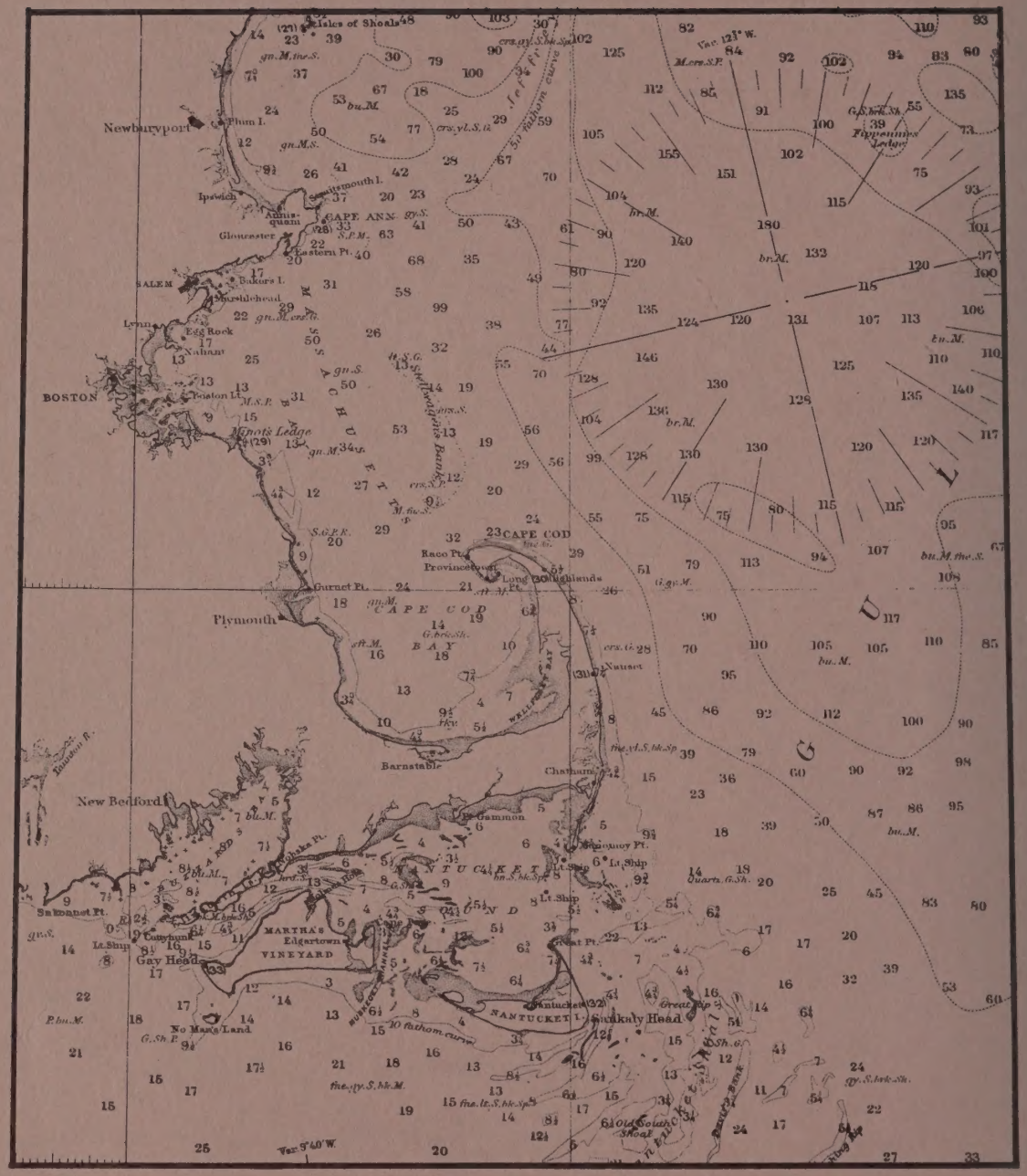

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LETTER FROM THE DIRECTOR

November, 1985

Dear Reader:

I am happy to report that the Coastal Zone Management Program is in its eighth year of implementation in Massachusetts and has recorded several major milestones in recent years. This "annual report" covers 1983–1985 and describes some of MCZM's recent accomplishments, ongoing projects and new initiatives.

One of the most significant events of the last two years was the passage by the state legislature of Chapter 589, an Act Relative to the Protection of the Massachusetts Coastline, in December 1983. The Act statutorily established the Coastal Zone Management Office, strengthening our prior status as an administratively created program within the Executive Office of Environmental Affairs. I consider this action as a mandate by the citizens of Massachusetts and their elected officials to continue the critical task of providing a balanced and comprehensive management strategy for our 1500 miles of coast.

Although the Massachusetts CZM Office is now permanently established, the fate of the federal Coastal Zone Management Act (CZMA) is more tenuous. The CZMA expires this year and Congress is presently considering several reauthorization bills. As Chairman of the Coastal States Organization, I have spent several days over the past months working in Washington for reauthorization of the Act. In July, the House of Representatives passed by unanimous voice vote a strong reauthorization bill. I am confident that the senate will do the same in the fall and hopeful that the President will sign it, thereby reaffirming the federal commitment to the federal/state partnership and assuring continued funding.

This report will highlight two other aspects of the 1983 Coastal Protection Act: amendment of Chapter 91, the waterways licensing statute, with respect to licensing tidelands development; and the creation of the Coastal Facilities Improvement Program (CFIP), an $18 million bond issue expressly aimed at rehabilitating publicly owned structures along the Massachusetts coastline. Both of these initiatives have become major components of our program.

With the Coastal Resources Advisory Board (CRAB), the MCZM Office has named the second week in October as COASTWEEK—an annual opportunity for all citizens to become involved with the coast. During COASTWEEK 1984, MCZM sponsored a conference called "Public Access to the Massachusetts Coast" which was oriented towards helping local officials and interested citizens to improve water access in their communities. This MCZM effort will continue with the publication of an access guide book this summer, implementation of the amendments to Chapter 91, and the initiation in several communities of the projects approved in the first CFIP grant round. A second round of CFIP awards will be made in 1986.

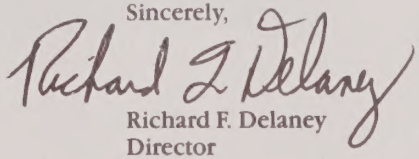
Two issues with which we have had longstanding involvement: Boston Harbor water quality and Georges Bank oil and gas exploration, have experienced significant progress. Although Boston's sewage problems are not yet solved, I am optimistic about the ability of the new Massachusetts Water Resources Authority to act expeditiously to clean up the harbor. After another court victory for the Commonwealth on Lease Sale 82, oil industry interest in offshore leasing seems to have diminished; however, MCZM involvement will inevitably pick up when the Department of the Interior tries to hold another Northern Atlantic lease sale, now scheduled for the fall of 1987.

In addition to the numerous other projects described in this report, the MCZM Office continues with its daily responsibility for establishing sound coastal policy, serving as the coordinating office for state agencies, and providing technical assistance to communities and citizens on coastal problems. Our MCZM Office also continues to review federally sponsored or licensed projects to assure that they are consistent with our coastal policies.

As we move towards the end of 1985, MCZM staff members are involved in several new projects, described in this report, which continue to further our goals of promoting public access, improving water quality for fisheries enhancement and the public's enjoyment, and protecting fragile coastal resources through wise management and critical area designation. I will miss several staff members who have recently moved on to new professional opportunities. I welcome several well-qualified new staff members to the office, and look forward to incorporating two new computers into the workings of the Office, as we complete our eighth year of managing the Massachusetts coast.

I appreciate your support—and hope that you will keep in touch with us.

Sincerely,



Richard F. Delaney
Director

BOSTON HARBOR WATER QUALITY

Deteriorating water quality in Boston Harbor has been an MCZM concern for many years. MCZM's involvement grew when Boston Harbor clean-up became a Dukakis administration priority. The water quality issue has been addressed on many fronts simultaneously and MCZM staff have been involved with them all, primarily as advisors to the Secretary of Environmental Affairs. At the Secretary's request, MCZM staff reactivated the longstanding Boston Harbor Interagency Coordinating Committee which now meets biweekly and includes all of the EOEA agencies with different responsibilities for managing Boston Harbor. Through this committee, the Secretary is able to resolve disputes among EOEA agencies and develop consolidated policy on harbor issues.

Governor Dukakis' initiative focused on the need to make decisions which would end the studying of Boston Harbor pollution problems and begin actual clean-up efforts. The Governor's first step was to appoint the Boston Harbor Water Quality Committee under the leadership of former Governor Francis Sargent. The Committee, which was staffed by MCZM people, met over many months beginning in June 1983. The most important recommendation to come out of the Committee was the need for an independent water and sewer authority, taking the responsibility out of the hands of the overburdened and financially constrained Metropolitan District Commission (MDC).

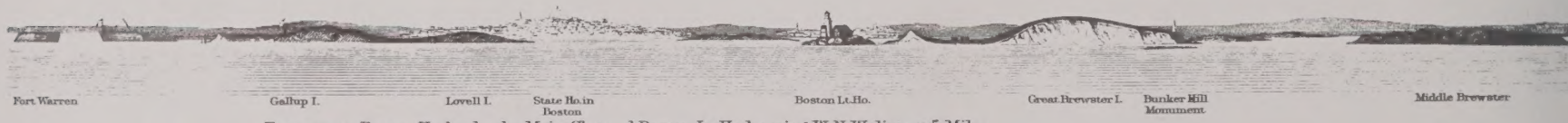
Simultaneous to the formation of the Sargent Committee, the state Superior Court took up a suit filed by the City of Quincy against MDC in 1982, over deteriorating water quality in Quincy Bay. Judge Garrity appointed Special Master Charles Haar to expedite the development of a schedule of tasks to be completed by the MDC and DEQE in order to clean-up the harbor. Bill Lahey, MCZM Counsel, served as Secretary Hoyte's representative in the legal proceedings, coordinating the communication of DEQE/MDC with the Court and Professor Haar. Judge Garrity also supported creation of a new authority and threatened to impose a moratorium on all new sewer connections if the legislature did not act expeditiously.

The widespread support for a new authority, accompanied by the lobbying by Secretary Hoyte and MCZM staff resulted in the passage of enabling legislation in December 1984. Soon thereafter, an interim office for the Massachusetts Water Resources Authority was set up. Secretary Hoyte is chairman of the 11 member Board of Directors, and through him present and former MCZMers Cheryl Breen and Bill Lahey continue to provide staff support. In this initial transition period, the Authority has been faced with a tremendous number of issues. These include:

1. reaction to the Environmental Protection Agency (EPA) denial of MDC re-application for a waiver from secondary treatment of sewage;
2. siting of new treatment facilities in Boston Harbor; and
3. development of an interim and long-term plan for sludge management.

In May, a suit brought by EPA and the Conservation Law Foundation against the MDC, other EOEA agencies and the Water Resources Authority was reactivated. The Quincy suit schedule of tasks may now be transferred to and expanded by the federal court.

MCZM will continue to monitor Boston Harbor clean-up activities, but now that a decision to site a new sewage treatment plant on Deer Island has been made, we hope that the Water Resources Authority will be able to move ahead with plans for plant construction and sludge disposal.



Entrance to Boston Harbor by the Main Channel, Boston Lt.Ho. bearing W. N.W. distant 5 Miles.

MARINE FISHERIES STATUS REPORT

The Massachusetts Division of Marine Fisheries (DMF), at the direction of the Commissioner of Fisheries, Wildlife and Recreational Vehicles, has completed a White Paper highlighting the problems of marine water quality and habitat alteration, as they affect the state's fishery resources, their habitats, and the commercial and recreational fisheries dependent on them. The White Paper is meant to:

1. increase the awareness of the Legislature and the public of the problems confronting the fisheries; and
2. serve as impetus for a renewed effort to meet the state's commitment to a safe and well-balanced marine environment and a sound economic resource base for the fishing industry.

At the DMF's request, the MCZM Office has drafted the sections describing the state's coastal habitats, the types and sources of pollution in our coastal waters, and the section assessing the causes and extent of habitat loss.

The DMF, in concert with their Marine Fisheries Advisory Committee and MCZM, plans to conduct a series of meetings to solicit the public's ideas about the health of our coastal waters and living marine resources. In addition, the MCZM Office will be working with the heads of state agencies with authority over activities that impact coastal waters on an assessment of the adequacy of their various programs. This will enable the Commissioner to make specific recommendations to the Governor and/or the Legislature regarding state actions that may be needed to correct any deficiencies in the state's efforts to manage and protect the Massachusetts coastal zone.

BUZZARDS BAY STUDY

In federal fiscal year 1984, Congress appropriated $4 million to the budget of the Environmental Protection Agency to initiate programs of water quality research, monitoring, and assessment in Puget Sound, Long Island Sound, Narragansett Bay and Buzzards Bay. Of this money, some $400,000 has been allocated for work in Buzzards Bay, with additional funding anticipated for the next fiscal year.

Working together, representatives of EPA's Region I office, the State Division of Water Pollution Control, and MCZM developed a workplan for this year that reflects input from the public, management agencies, and the scientific community. This workplan focuses on reviewing what work has already been done in the Bay, and what knowledge has been derived from that work, identifying gaps in that knowledge, and developing a plan for future research. Attention will be paid especially to ways to more rapidly and easily incorporate results of scientific research into the management process.

One specific project will focus on finding solutions to the current shellfish closures in Buttermilk Bay (Bourne and Wareham). Sources of the fecal contamination, whether from storm run-off, failing septic systems, marine heads or water fowl, will be traced. Comparisons will be made between the presence of coliform bacteria (the present standard used to trigger closures) and other indicators of contamination. Additionally, the pathway the contaminants follow from the land into, and through, the aquatic system will be defined and their ultimate fate discovered. The procedures developed in Buttermilk Bay should be applicable to other embayments throughout Buzzards Bay and elsewhere in Massachusetts.

NEW ACEC PROPOSAL

On July 29, 1985, Secretary of Environmental Affairs James Hoyte signed a document that would make portions of Eastham, Orleans and Brewster the Commonwealth's 7th coastal Area of Critical Environmental Concern (ACEC). The activities leading to this nomination began in 1982 with the Eastham Conservation Commission. Through the intervening years, MCZM has participated in a series of public meetings to explain the program and its administrative procedures and to elicit information about the site. Probably as a result of these extended efforts, a strong consensus developed, resulting in the nomination being submitted by the Boards of Selectmen, Planning Boards, and Conservation Commissions of the three affected towns.

The area includes the tidal flats of Cape Cod Bay between First Encounter Beach in Eastham and Weathervane Way in Brewster, nine barrier beaches, and some 900 acres of salt marsh.

At a public hearing, held on May 15, 1985, there was near unanimous support expressed for this designation.

The law governing shoreline development in Massachusetts is changing in dramatic ways. Judicial opinions, statutory amendments, and forthcoming regulations are the sources of these changes which will greatly expand the public's opportunities to use and enjoy the Massachusetts' coast. In its 1983 session, the Massachusetts' legislature amended the waterways licensing statute, General Law Chapter 91. The amendments, which were part of the Coastal Protection Act, were an outgrowth of an MCZM sponsored conference entitled "Tidelands Management in Massachusetts." Approximately 60 invited participants, representing the diverse interests in waterfront development and preservation in Massachusetts, attended. The workshop was an important catalyst for the passage of the amendments to Chapter 91 two months later, in December 1983.

The amendments codify some of the most salient features of the Public Trust Doctrine, a concept which finds its roots in ancient Roman Law and has been pursued and protected by the courts ever since. The purpose of the Public Trust Doctrine is to assure that public lands are used for proper public purposes. The accompanying article provides some background on tidelands ownership and regulation historically. Following is a description of the recent legal changes and their significance for public use of the Massachusetts coast.

The waterways licensing program, the oldest regulatory program in the country, regulates all activity below the high water mark. This area, known as tidelands, is made up of two distinct geographic areas, each with different legal significance. The area between the mean high water line and extreme low water is owned by the upland owner. These areas, the tidal flats, are called private tidelands. The lands seaward of the extreme low water line are owned exclusively by the Commonwealth and are called Commonwealth tidelands. An important variation of this boundary delineation is the common law rule that artificial alterations of tidelands, filling in a portion of Commonwealth tidelands for instance, does not, in itself, alter ownership boundaries. Consequently, the geographic area affected by the laws discussed here is significantly larger than existing tide-flowed lands. Large portions of the real estate in coastal communities in Massachusetts are affected by the Public Trust Doctrine since much of the property is formerly filled tidelands. In the City of Boston, for instance, all of Back Bay, some 570 acres, is filled tidelands.

The 1983 amendments to Chapter 91 represent the most significant change to the tidelands licensing process in Massachusetts since it was first established in 1866. In essence, the amendments codify the Public Trust Doctrine. The amendments are designed to accomplish three broad objectives. First, the amendments offer increased substantive protection of the public's interest in tidelands. Second, the amendments establish new procedural safeguards of the public's interest. Third, waterfront developers are given more financial security and certainty.

INCREASED SUBSTANTIVE PROTECTION

The amendments to Chapter 91 expand and clarify the substantive requirements that are necessary to get a tidelands license. First, Chapter 91 now expressly requires a public purpose test. Non-water dependent projects in Commonwealth tidelands must "serve a proper public purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands."

This language requires the same kind of analysis that was used by the Illinois Supreme Court when it found that employment and tax benefits from a steel mill on tidelands did not satisfy the public purpose test. Thus to secure a Chapter 91 license for non-water dependent projects on private tidelands or any project on Commonwealth tidelands, an applicant now must provide significant water related benefits to the public. The larger the scope of the project the more public benefits are necessary to achieve the required balance of benefits to detriments.

A second substantive provision of the recent amendments is that a new license is necessary any time that there are any changes of use or substantial structural alterations. This provision applies to new licenses as well as existing tidelands licenses and grants. The change of use provision is also significant because it expressly pertains to formerly filled tidelands whether or not they were filled pursuant to a Chapter 91 license or a legislative grant.

A third new requirement is consistency with the Massachusetts Coastal Zone Management Program. Section 18 now requires that licenses issued to non-water dependent projects in private

tidelands or any projects in Commonwealth tidelands be consistent with the policies of the MCZM Program. This provision adds both a substantive and procedural safeguard to the issuance of licenses by DEQE.

INCREASED PROCEDURAL PROTECTION

The recent amendments to Chapter 91 impose a number of new procedural prerequisites to obtaining a tidelands license. Applications for a Chapter 91 license must now undergo substantial public review. Pursuant to Section 18, public notice must be published forty-five days prior to the issuance of a license. Proposals for non-water dependent uses of tidelands must also receive a public hearing in the affected community. Further opportunity for public review is provided by the requirement that the public purpose determination for non-water dependent projects be in writing. A right of adjudicatory appeal pursuant to Chapter 30A is provided for "any person aggrieved by a decision by the department to grant a license."

REDUCTION OF UNCERTAINTY

As discussed in the accompanying article concerning the Public Trust Doctrine, irrevocable licenses granted by the legislature grew out of the perception among the coastal development community that Chapter 91 licenses provided inadequate financial security to waterfront developers subsequent to the *Cities Service* decision. The amendments to Chapter 91 address this concern by requiring the payment of compensation when a license is revoked for any reason other than non-compliance. Section 15 of Chapter 91 now requires compensation under Chapter 79, as in an eminent domain taking, for valuable structures in the event of a license revocation without cause.

Chapter 91 also gives developers more certainty by requiring, in Section 18, that DEQE specify the permitted uses in the license. Typically, former Chapter 91 licenses or irrevocable licenses did not specify the permitted use. Thus, a license or grant holder could never be certain whether a change in use of tidelands would comply with the original intent of the license as required by the *Boston Waterfront* decision. The requirement that all subsequent Chapter 91 licenses specify the permitted use(s) coupled with the written finding by DEQE that non-water dependent projects serve a proper public purpose eliminates the need to guess at the original purpose for which the license was granted.

IMPLEMENTATION OF CHAPTER 91 REGULATIONS

The amendments to Chapter 91 necessitate the wholesale revision of the waterways licensing program and the implementing regulations. MCZM and DEQE appointed a citizen advisory group to help them in this important effort. Most of the members of the Tidelands Advisory Committee (TAC), where chosen from the original tidelands conference held in 1983 and included representatives of the fishing industry, residential developers, shipping groups, recreational interests, environmentalists, marina operators, title insurance companies and bankers.

Since the spring of 1984, steady progress has been made towards developing final regulations. MCZM and DEQE convened approximately six meetings of the TAC over several months. Rich Delaney, MCZM Director, and Rod Gaskell, former director of DEQE's Division of Wetlands and Waterways, rotated the chairmanship of the meetings while their staffs alternated the preparation of briefing papers and oral presentations. The Committee's input was valuable to the staff members in their efforts to rewrite the regulations.

Between August 1984 and May 1985, MCZM and DEQE staff jointly drafted new regulations. In May 1985 the draft Chapter 91 regulations were sent to the TAC for review. At present, MCZM is preparing amendments to its own regulations to reflect its expanded role in waterfront development planning licensing as a result of the changes to Chapter 91. Drafts of the new Chapter 91 regulations and MCZM's revised regulations will be available for full public review and comment in August 1985. A number of public hearings will be held in various locations along the Massachusetts coast. The regulations will then be promulgated.

THE HISTORY OF THE PUBLIC TRUST DOCTRINE

The Public Trust Doctrine finds its origins in ancient Roman Law. Roman society was heavily dependent upon the sea for commerce and food. Access to the sea was therefore essential to one's livelihood. The Romans refined the Greek notion that marine resources were exempt from private property ownership.

As the Roman Empire crumbled around 1000 AD, so did compliance with its sophisticated legal code. During the Dark Ages in Europe, shorelands and other marine resources fell into private ownership. The English King claimed ownership of all coastal resources, including fisheries. Exclusive private rights to these resources were sold to private subjects.

During the late 12th and early 13th century the public became increasingly dissatisfied with this feudal land ownership system in England. The passage of the Magna Charta in 1215 restored some of the public's rights in tidelands by limiting the King's authority to transfer tidelands to private subjects.

The origins of the Public Trust Doctrine in Massachusetts are dichotomous. In 1641 the Massachusetts Bay Colony became the first entity to codify the Public Trust Doctrine in America. This was done in the Colonial Ordinance, first enacted in 1641, which guaranteed public access to great ponds. A few years later, however, the Colonial Ordinance was amended to extend private property ownership to the low tide line. The purpose of this 1647 enactment was to encourage private wharf construction and maritime commerce, in light of the Colony's inability to finance these undertakings.

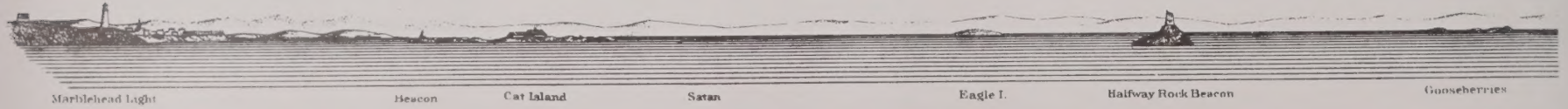
The Colonists, however, were mindful of the public's rights in the intertidal zone, and expressly reserved the public rights of fishing, fowling and navigation in these lands. These rights are still held by the public today.

During the industrial revolution in the 1800's, many states conveyed tidelands to private parties to encourage commerce and navigation. Massachusetts was no exception. In the early nineteenth century the Massachusetts legislature enacted a number of wharfing statutes. These statutes authorized private parties to construct and maintain wharves seaward of the extreme low water line. This practice fostered extensive filling of Commonwealth's tidelands for maritime development. The extensive development of tidelands during the early 1800's gave rise to two legal developments which have had a profound influence on contemporary waterfront development in Massachusetts.

In 1866 the Massachusetts legislature, concerned about the effects of unfettered private waterfront development, created a permanent board to regulate development in Boston Harbor. This board, the Board of Harbor Commissioners, was the predecessor to the current tideland regulatory body, the Division of Wetlands and Waterways in the Department of Environmental Quality Engineering (DEQE).

The second legal development which arose from the conveyances of tidelands to private developers during the nineteenth century was the U.S. Supreme Court decision in *Illinois Central Railroad v. Illinois.* In 1869 the Illinois legislature granted some 1000 acres of tidelands along Chicago Harbor to the Illinois Central Railroad Company. Four years later the Supreme Court determined that the grant violated the Public Trust Doctrine and that it was therefore invalid. The trust doctrine, said the Supreme Court, requires the government to preserve such waters for the use of the public. Permanent conveyances of trust property to private individuals, said the court, are invalid except in very limited circumstances, such as the improvement of navigation. *Illinois Central* established an enduring precedent for courts to use the Public Trust Doctrine to prevent a state from breaching its duty as a trustee of Commonwealth tidelands.

Two relatively recent opinions by the Supreme Judicial Court (SJC) served to further complicate the law pertaining to waterfront development in Massachusetts. The legislature created the Board of Harbor Commissioners, with authority to issue tidelands licenses, and much of the tideland development in Massachusetts has occurred pursuant to these licenses. It was generally believed by real estate attorneys that a provision in Section 15 of Chapter 91 prevented the revocation of tidelands licenses, if structural improvements had been made on the licensed property, unless compensation was paid to the licensees. In 1940, however, the SJC issued an opinion which ran counter to this widespread belief. In *Commissioner of Public Works vs. Cities Service Oil,* the court held that the legislature, or its delegated body, could revoke a Chapter 91 license without compensation despite the presence of valuable structures on the licensed property.



This decision sent tremors through the legal and financial community involved with waterfront real estate. Banks became less willing to finance tidelands projects due to the financial risk posed by potential revocation. Attorneys for tidelands developers, in an attempt to provide lending institutions with more security, began to request special acts from the state legislature to declare certain tideland licenses irrevocable, the so called "irrevocable licenses." Between 1959 and 1969, for instance, 45 irrevocable tidelands bills were passed.

In 1979 the SJC issued another opinion which had a profound impact on the law pertaining to waterfront development. In *Boston Waterfront Development Corp. vs. Commonwealth of Massachusetts* the SJC held that the 1800's wharfing statute did not convey unrestricted property rights. The Court determined, with reference to *Illinois Central,* that tidelands licenses could only be granted for public purposes. Thus, while the Lewis Wharf Statute conveyed title to the property below the low water mark, the title was restricted by an implied condition that the property be used for the public purpose for which the land was originally granted. For instance, a legislative grant from the 1800's to build wharves was not valid for condominium use.

The Boston Waterfront decision breathed new life into the Public Trust Doctrine in Massachusetts. It emphasized the tenacity of the doctrine by finding that the doctrine withstood an explicit legislative grant over one hundred years ago. It established the public trust doctrine as the fundamental legal basis for protecting the future public interest in waterfront areas.

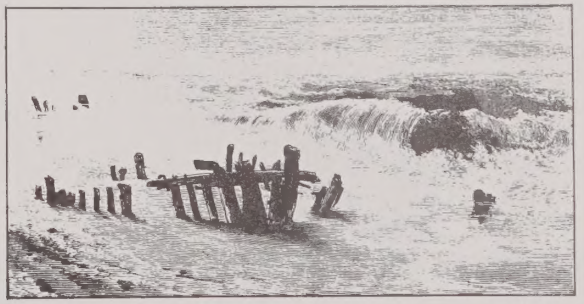
Proper management of our coastal zone often proves to be a complex and frustrating endeavor. Conflicting user needs can present extremely difficult management scenarios that require well thought out decisions. A lack of adequate scientific and technical information often finds the best-intentioned coastal manager somewhat short of a complete understanding of the physical and/or biological processes of any given reach of the coastal zone.

The Massachusetts Coastal Zone Management Office has taken a big stride forward in an attempt to meet the need for a better understanding of our coastal zone; past, present and future. The production of 137 Shoreline Change Maps has recently been completed for the entire Massachusetts shoreline. The purpose of producing the Shoreline Change Maps is to present an accurate compilation of long-term changes that have occurred in the Massachusetts coastline. In turn, this information allows us to consider future shoreline conditions based on historical and recent trends. It is intended that the maps and accompanying data will be used by local, state and federal officials to review existing coastal land use policies and/or establish new land use policies and regulations that will provide better guidance for the management of the Massachusetts coastal zone. It is also anticipated that the information obtained through this effort will be utilized by developers, scientists, engineers and the general public in the review and design of coastal construction activities.

The technique used to generate the shoreline change maps is a new state-of-the art process known as Metric Mapping. Metric Mapping is a system designed to make use of high speed data processing capabilities of a computer to emulate the best photographic techniques. All of the information is digitized and the highly accurate maps meet or exceed national maps accuracy standards. The maps are plotted on durable mylar at a scale of 1.5000 (1 inch = 416 feet).

Each map locates, where accurate historic data were available, the position of mean high water for four general time periods. Specific shoreline data shown on each map fall into the four general time periods of Early (1850's), Middle (1900's), Late (1950's) and Base Map (1970's). Cultural features including major (and some minor) roads and town and state boundaries are also indicated on the maps for reference purposes.

It is anticipated that copies of the maps will be made available to the general public for a nominal fee through the Center for Massachusetts Data at the University of Massachusetts. The expected release date for the maps is October 1985.



WAQUOIT BAY NATIONAL ESTUARINE SANCTUARY PROPOSAL

Autumn of 1984 saw the publication and review of a Final Environmental Impact Statement and Draft Management Plan for a proposal to incorporate Waquoit Bay in Falmouth and Mashpee into the national system of Estuarine Sanctuaries. Successful completion of the public review process allowed the Sanctuary Programs Division of the National Ocean Service (NOAA, Department of Commerce) to award a grant of $1.6 million to the Commonwealth for acquisition and development.

It is hoped that availability of this money will allow the acquisition and renovation of the Swift Estate, a 16 room Victorian "cottage" with carriage house, which sits on a bluff at the north end of Waquoit Bay. This will eventually become a research and education center and headquarters for Sanctuary activities. Appraisals have been made and, as of this writing, negotiations are ongoing with the owners, with an eye toward purchase.

Once the property is acquired, a Sanctuary Manager will be hired, Advisory Committees will be formed and a Final Management Plan will be developed. Completion of these tasks will lead to formal designation, hopefully in the fall of 1985.

LEASE SALE 82

After an initial flurry of activity, the future of oil and gas exploration on Georges Bank does not look promising. In 1984, the Department of the Interior made its third attempt to hold a North Atlantic lease sale. Throughout the two years that preceded the September 26, 1984 sale date, MCZM staff participated in the planning process on behalf of the Governor, Secretary Hoyte, and the MCZM program, making every effort to have important fishery areas removed from the sale.

When all of Massachusetts' concerns were not addressed in the final sale plans, the Commonwealth sued Interior. The Conservation Law Foundation, representing several environmental and fishing groups, was party to the suit. Citing violations of the Outer Continental Shelf Lands Act and the National Environmental Policy Act, District Court Judge David Mazzone decided in the Commonwealth's favor on September 25, 1984, granting a preliminary injunction against the sale.

Only a few hours after the announcement of Judge Mazzone's decision, the Department of the Interior cancelled the sale, scheduled for the next day. No sealed bids, which have to be submitted to Interior at least 24 hours in advance of a sale, had been received, an unprecedented occurrence in offshore leasing. Part II of Sale 82, which had been put on hold until after the World Court decided on the US/Canada maritime boundary, was cancelled in October 1984 when the World Court gave the eastern quarter of Georges Bank to Canada. Presently, Sale 96, the next North Atlantic sale on the five year leasing agenda, is scheduled for September 1987.

PUBLIC ACCESS CONFERENCE

The culmination of Coastweek '84 last October was an MCZM sponsored conference called "Public Access to the Massachusetts Coast." The one day event, held at the Federal Reserve Bank of Boston, was directed at community planners, town councils, developers and citizens. Representatives of state and local government, academia, the private sector and non-profit groups discussed their experiences with the practical problems of providing public access to the shoreline. It is hoped that the ideas and information disseminated at the conference gave attendees a broader knowledge of the tools available to promote public access in their communities. MCZM will publish a follow-up handbook in the summer of 1985, titled "The Way to Sea: Methods for Massachusetts Communities to Provide Public Access to the Coast."

The conference was opened by Secretary of Environmental Affairs James Hoyte, who told the approximately 200 attendees that "Massachusetts has 1500 miles of coastline but only 130 of those miles are accessible to the public; we can and must have more coastal access for the public—especially when you consider that 75 percent of the people in this state live within 25 miles of the coast." Secretary Hoyte spoke of the statewide, 10-year bond authorization of $160 million for acquisition and development of coastal property, saying, "These programs represent a serious commitment on the part of the state to help local officials and conservation commissions open up the coastline in their communities for our citizens."

The keynote speaker was Robert Eckhardt, a former Congressman and author of the Texas Open Beaches Act. Mr. Eckhardt told of his efforts toward the passage of the Texas Act, which opened nearly all of Texas' beaches to the public.

The following speaker was Dennis Ducsik, a professor and author of *Shoreline for the Public*. Mr. Ducsik noted that the number of miles of publically owned coastline has increased over the past 20 years, but that the increase is overshadowed by the ongoing population growth in coastal areas of Massachusetts.

The two introductory speakers were followed by three panel discussions. The first panel addressed the legal tools that are available for maintaining and improving public access. Peter Ryner, Planning Director for the town of Barnstable, spoke of the huge development pressure being experienced on Cape Cod and talked of the town's efforts to maintain historic landings and access ways and their active efforts to purchase more public lands as recommended by the town's Open Space Plan.

Dr. Philip Herr, a consultant specializing in zoning and a Professor of Planning at M.I.T., noted that there remains much undeveloped coastal land and recommended that local zoning be strengthened, particularly by making approval of subdivisions more difficult, and perhaps by allowing planning boards to negotiate with developers to grant them a permit in exchange for open space or public access to the waterfront.

The third member of the first panel was Carl Dierker, an attorney for DEQE, who described the recent amendments to General Law Chapter 91, the waterways licensing statute. The amendments are discussed in detail elsewhere in the *CZM Review*.

The next three panelists discussed innovative land acquisition techniques. The speakers addressed traditional fee simple acquisition as well as the more affordable purchase of certain property rights, which leave the original owner with most of the property rights. Renee Robin, legal counsel to the MCZM office, discussed different sources of acquisition money that is available from state sources.

William Clendaniel, then Acting Director of the Trustees of Reservations, discussed the different tools used by the Trustees and other non-profit organizations to acquire and manage their properties, including fee simple purchase and outright gifts. Mr. Clendaniel also discussed some other more innovative techniques that have been either tried or envisioned by the Trustees.

The final panelist, Donald Connors, an attorney with Choate, Hall & Stewart, discussed the Nantucket Land Bank, formed in 1982. The land bank is controlled by an independent elected board which receives 2% of the revenues from Nantucket real estate transactions. The funds are held by the Land Bank to be used for acquisition of land for open space and conservation purposes.

The final panel discussed public access consideration in the redevelopment of urban waterfronts. Officials from Salem and Gloucester spoke of recent waterfront projects in their cities, but the main emphasis was on Boston. The panel moderator, Maurice Freedman of Sasaki Associates, Inc., outlined the areas in which access to Boston's waterfront would be improved: 1) docking for commuter and excursion boats; 2) public landings for private boats; 3) pedestrian access; and 4) tax-generating real estate development.

In his closing comments, MCZM Director Richard Delaney recognized that there is room for improvement in the cooperative effort to make more of the Massachusetts coast accessible to the public. Mr. Delaney stressed that success is dependent on public and private interests working together. He also commented on the many innovative techniques that are available for improving and maintaining public access, which were discussed during the conference. Mr. Delaney reiterated the MCZM/EOEA commitment to access and offered technical and financial assistance to coastal communities.

Many of the tools and techniques to provide access will be discussed in detail in the forthcoming MCZM publication. The conference organization was administered by Steven Brautigam, with funding assistance from the Environmental Internship Program and the Massachusetts Coastal Zone Management Office.

Coast between Cohasset Entrance and Scituate Harbor. Minot Ledge Lt.Ho. bearing S. by E. distant 2¾ Miles.

CAPE COD BAY DREDGED MATERIAL DISPOSAL SITE STUDY

The Massachusetts Coastal Zone Management (MCZM) Office and the Department of Environmental Management (DEM) reached a landmark achievement when funding for the Environmental Impact Report (EIR) for the Designation of a Dredged Material Disposal Site in Cape Cod Bay was approved in 1984. This study will be the first comprehensive oceanographic study ever conducted in Cape Cod Bay and should reap information with many other uses, in addition to the designation of a dredge disposal site. The EIR will include scientific and socio-economic evaluations to determine which, if any, of four sites in Cape Cod Bay is the preferred alternative for dredged material disposal. Dredged sediment considered for disposal in the Bay will be relatively "clean," as defined in the state Water Pollution Control Regulation.

At present, the disposal of dredged sediments is not allowed in Cape Cod Bay, and will not be until an EIR is completed to evaluate the associated environmental impacts of the activity. As a result, sediments removed from harbors, channels, mooring areas, or ponds along the inner Bay must be disposed of at either an approved upland site or at the Foul Area, an ocean site located approximately twelve miles northeast of Boston. However, upland disposal of marine (salt-laden) sediments is limited on the Cape by the EPA "Sole Source Aquifer" designation. The purpose of the designation is to protect the Cape's groundwater from toxic chemical or salt contamination by prohibiting certain activities. The transport of marine sediments from the Cape to the Foul Area is limited by the expenses related to the great hauling distance. As a result of these two limitations, most dredging along the inner Bay is currently at a standstill.

Both MCZM and DEM anticipate that the analysis provided in the EIR will facilitate designation of one or more disposal sites at a marine site in short hauling distance from the Cape, alleviating the present dredge disposal problems.

The consultants for the project, Marine Geoscience Applications of Woods Hole, Massachusetts, are scheduled to perform quarterly oceanographic sampling at each of the four alternative marine sites for one year (1985). They will sample the sediments, fish and bottom dwellers, and measure currents and waves. During 1985, the consultants and MCZM will perform socio-economic studies which include interviews with the fishing community to identify the degree of fishing activity at each of the sites and the site designation preferred by the fisherman. In addition, the consultants will investigate the costs of hauling dredge spoils from various points along the Cape to the four sites, and the economics of not designating a site and not allowing dredging.

During 1986, the consultants will submit a draft EIR which will include the recommendation for a preferred site(s) and a proposed monitoring program for the site once it is in active use. The consultants, MCZM and DEM will hold public hearings on the draft EIR during the summer of 1986 and will submit the final EIR to the Secretary of Environmental Affairs in the fall of 1986. We invite anyone who is interested in the project to attend the public hearings and to submit comments or related information to the MCZM Office.

COASTAL FACILITIES IMPROVEMENT

Over $8 million in preliminary grant approvals that will enable 19 Massachusetts communities to improve their public coastal facilities, were announced on February 15, 1985 by Governor Michael S. Dukakis, Secretary of Environmental Affairs James S. Hoyte, and Coastal Zone Management Director Richard F. Delaney. The funding comes from the Coastal Facilities Improvement Program (CFIP), authorized by the legislature in 1983 and administered by the Coastal Zone Management Office. CFIP was included in the Coastal Protection Act of 1983 in recognition of the great need by Massachusetts coastal cities and towns to improve and maintain coastal facilities that are absolutely vital to the economic well being of the Commonwealth's fishing, marine, tourist and recreational industries. The program provides financial assistance on a "reimbursable" basis to municipalities so that they can plan for, construct, maintain and improve their public coastal facilities. CFIP will reimburse communities up to 50% of the total cost of a project on a dollar for dollar basis, up to $1 million for a single project and not more than $1.5 million for a single community.

Many types of improvement projects are allowed under the CFIP. They include but are not limited to the construction or repair of the following: bulkheads, ripraps, piers, wharves, docks, floats, beaches or other structures used for fishing, marine industry or commerce, marine recreation, tourism or public access purposes. Other allowable projects include facilities for fish handling or storage, parking facilities and walkways necessary for access to a waterfront

facility. The nineteen projects approved in February include waterfront park acquisition and development, recreational and commercial pier construction, rehabilitation, and historic restoration.

Certain basic eligibility criteria have been developed for this reimbursement improvement program. Only coastal communities are eligible. The project site must be owned and maintained by a public entity and fall under one of the following categories:

1. Commercial Area Revitalization District (CARD), or
2. Special Assistance Development Area (SADA) or
3. Designated Port Area, or
4. "Substandard" as determined by the Secretary of Environmental Affairs.

Other restrictions include the requirement that all necessary permits and licenses be applied for prior to submitting an application.

The MCZM Office reviewed the funding applications, along with an Interagency Review Board composed of members of appropriate state agencies, and the Coastal Resources Advisory Board, a group comprised of public members to advise MCZM on many issues. Considered in the review process were confirmation of project site eligibility, status of necessary permits and licenses, source of matching dollars, community needs and any formal or informal harbor management plans that the community may have. Generally, it is the preference of the Executive Office of Environmental Affairs and MCZM to make awards for projects which are prepared to begin construction and which have been found to be viable both financially and environmentally. Awards granted to any communities which have not met the conditions outlined in the preliminary approval by August 1, 1985 will be rolled over to the second grant round.

Commenting on the CFIP GRANTS, MCZM Director Richard F. Delaney said "I am delighted that we are able to help so many communities with a wide selection of projects from waterfront land acquisition to pier improvement and construction. The grants should provide a needed boost to the coastal fishing and tourist industries through infrastructure repair and construction, in addition to improving waterfront access for the people of the Commonwealth."

The second round for CFIP applications begins August 1, 1985. Applications must be submitted to the MCZM Office no later than November 29, 1985. Applications will be reviewed during the months of December and January, and it is expected that the Secretary of Environmental Affairs will announce the grant recipients in mid-February 1986.

Following is a list of the communities which have received preliminary grant approvals and a description of the projects:

BOSTON HARBOR REGION

BOSTON (BRA)
Charles Navy Yard/Shipyard Park—$560,439
This project involves creating ⅓ mile of pedestrian public walkway as a promenade around drydock #2 adjacent to the National Park site. It is the last phase of a $2.9 million construction program for a 16 acre passive recreation park within the Charlestown Navy Yard for the Community of Boston. The park and developments are part of a total rehabilitation effort for the Charlestown Navy Yard, and when completed, almost ⅓ mile of harborfront public pedesrian access will be created.

BOSTON (EDIC)
Dry Dock Park—$51,300
This project involves constructing a fence between the site where a cement plant now under construction will operate, and a passive recreation park which the EDIC of Boston and Coastal Cement, Inc., plan to develop on Drydock #3. The EDIC and Coastal Cement, Inc. are working jointly to improve the total area of the drydock, part of which they will share. EDIC's park would create access and open new visual vistas to the water edge, and the fence project would provide safety and security.

HULL
Nantasket Pier Renovation—$660,000
This project is a renovation of the North and South sides of the town pier for fishing, commercial and recreation use. Improvements would include the removal of dilapidated wooden bulkhead; the design and construction of 320 feet of new steel bulkhead and anchorage system; completion of timber pier at tip; and installation of fender piles and slip ring assembly around the entire perimeter of the pier and pavement.

CAPE COD AND ISLANDS

BARNSTABLE
Hyannis Gateway Park—$1,000,000
This project would acquire 2.91 acres of Hyannis Harborfront property to prevent private motel development and to prevent the loss of a small vessel marina. The project would serve as a gateway park, a vital link between downtown and the waterfront. The Town will keep the marina, remove existing residential buildings, and link the land with Bismore Park through facilities such as sidewalks, a harbor boardwalk, and lights.

DENNIS
Sesuit Harbor Pier Bulkhead—$15,000
This project will prevent further erosion of a frequently used pier within Sesuit Harbor by installing bulkhead around it. The pier is fairly new, used a great deal by commercial and recreational fishermen and of significant economic value to the town of Dennis.

EDGARTOWN
Memorial Wharf Rehabilitation—$179,557
This project will replace 285 feet of deteriorating bulkhead on the three water sides of Memorial Wharf in Edgartown Harbor. In addition, deck planking will be repaired and fender piers will be replaced. These facilities are used for recreational and commercial purposes.

FALMOUTH
Eel Pond Dock—$34,340
This project involves removing an existing town dock and replacing it with one of the same design in Eel Pond, Woods Hole, Falmouth. The dock, once used extensively by the public and local fishermen, is presently in such disrepair that vehicles are prohibited.
This dock is the only facility for temporary loading and docking for small craft in this harbor and replacing it would allow it to be utilized again for recreational and commercial use.

OAK BLUFFS
Harbor Facilities Repair—$657,146
This project will complete the restoration at the Oak Bluffs Harbor for recreational and commercial use by completing bulkheading, replacing a large box culvert between Sunset Lake and the harbor itself, making improvements to the water system, electrical system, and restoring walkways and benches. The Harbor is a local, state and national resource.

PROVINCETOWN
Provincetown Fish Pier—$1,000,000
This project involves constructing a new commercial fish pier next to the existing McMillan Pier. The new facility will take on all the commercial fishing and related activities while the old facility will be improved to accommodate marine sport and recreational activities and improve public access.

NORTH SHORE REGION

DANVERS
Popes Landing Rehabilitation—$200,000
This project involves stabilizing 255 feet of embankment, constructing public restrooms, a harbormaster's office, a walkway, benches, and picnic tables. The area is becoming increasingly popular and the renovations would benefit the public by preserving one of the town's most important waterfront recreation sites and increasing public access to the coast.

GLOUCESTER
Harbor Cove—$360,000
The city plans to use the CFIP funds to install a floating dockage system with a pile anchor system attached to an existing wooden wharf. The facility could accommodate 11 to 15 boats depending on size and the rafting arrangement.

LYNN
Marine Park Commercial Fish Pier—$1,000,000
This project involves developing a totally water dependent commercial, multi-use public pier facility to support marine activities in Lynn. It will provide a heavy duty pier for the off loading and servicing of offshore commercial fishing vessels; an off loading pier for commercial lobstermen; and a permanent berthing for the Charter/Tour boat fleet. In addition, an access road will be constructed to service the pier facility.

SALEM
Collins Cove Recreational Improvement —$24,100
This project involves stabilizing the seawall at Collins Cove Playground by removing the existing rubble wall and constructing a rip-rap slope. The project requires regrading a section of the playground which presently has sinkholes, a hazard to the playground area.

SWAMPSCOTT
Fish House/Pier Restoration—$115,000
This project will repair and restore the Fish House for commercial fishermen and boat owners. The Fish House has been a functioning center for the local fishing industry for 150 years and is the subject of a pending application for designation before the National Registry of Historic Places. Repairs include fire protection, sprinklers, replacement of dilapidated wood structures such as stairs and beams, and minimal adjacent pier repairs. The project will assure safe access to the water through repair of the pier.

SOUTH SHORE/SOUTHEAST REGIONS

NEW BEDFORD
Steamship Pier—$725,000
This project involves constructing a boardwalk, a concrete pier extension, and timber pile piers to provide additional berthing space for 30 vessels in New Bedford's existing fleet which is rapidly expanding. In 1983 New Bedford ranked first in the nation in value of catch and over the last 5 years, more than $12 million in revenue bonds have been invested by the private sector to construct fish processing facilities and support services in the North and South Terminals.

PLYMOUTH
Town Wharf—$1,000,000
This project will improve municipal facilities in Plymouth Harbor by reconstructing the Town Pier and constructing/relocating floatation systems. The parking area on the Town Wharf will be redesigned to eliminate traffic problems and congestion. Other improvements include adequate subsurface stormwater drainage system, curbs, islands, benches, tables, and lights.

SCITUATE
Town Pier Reconstruction/Expansion —$500,000
This project will remedy the present deteriorating conditions at the Town pier by encapsulating the existing solid fill structure within a new solid fill configuration. Commercial fishing is the single largest industry operating in and affecting the economy of the Town of Scituate. The project will improve access by resolving existing conflict. In addition, the design includes improved facilities for individuals visiting the pier.

SOMERSET
Village Waterfront Park—$300,000
This project will develop a piece of municipally owned land on the bank of the Taunton River as a multi-purpose waterfront park site. The CFIP funds will be merged with $285,000 of funds already awarded through the Land and Water Conservation Fund and $25,000 previously appropriated by the Town to build the facility.

SWANSEA
Ocean Grove Parking Lot Repairs—$25,000
This project involves Phase I of the Ocean Grove Beach Plan by renovating the parking area in front of the Bluffs Community Center. Beautification and maintenance of this recreational facility will help revitalize the area by attracting more visitors and begin Phase I to renovate the Ocean Grove Beach Area.

STAFF

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Marianne Connolly *CFIP Manager (on 9 month educational leave)*

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Thomas Coyne *EOEA Payroll Clerk*

Kathleen Meather *EOEA Assistant Payroll Clerk*

Denise Cavalieri *CZM Chief Clerk*

Sherrie Alaboh *CZM Clerk*

Geraldine Burton *CZM Clerk*

PUBLICATIONS

In the past year MCZM has issued, or updated and reissued, several publications. These include:

Areas of Critical Environmental Concern (ACEC's)
Includes descriptions of all ACEC's (both coastal and inland) as well as summaries of all related laws, regulations, and agencies involved in implementing this program.

Barrier Beaches, Salt Marshes, and Tidal Flats, January 1985
An inventory which provides town, county and state-wide area summaries of these critical coastal resources. Prepared in conjunction with the Lloyd Center for Environmental Studies with help from the U.S. Fish and Wildlife Service, Region V.

Final Environmental Impact Statement and Draft Management Plan for the Waquoit Bay National Estuarine Sanctuary, September 1984.
Prepared in conjunction with the Sanctuary Programs Division of NOAA, Department of Commerce.

"This Is Massachusetts Coastal Zone Management," July 1985.
A general pamphlet describing the MCZM Program.

The Way to the Sea: Methods for Massachusetts Communities to Provide Public Access to the Coast.
A handbook describing legal and regulatory solutions; ownership and acquisition techniques.

(In press)—Proceedings of a conference on **Salt Pond and Tidal Inlets: Maintenance and Management Considerations.**
The proceedings contain include 10 papers, presented at a conference in November 1983, dealing with various aspects of salt ponds and manipulation of their inlets.

PAPERS PUBLISHED BY STAFF

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Diamond, Harriet M. 1983. *"Cooperative Dredging: The Management of Port and Harbor Dredging Projects in Massachusetts."* In: Proceedings of Oceans '83, San Francisco, CA.

Hughes, Patricia E. and Katrina Van Dusen 1986. *"The Politics of Oil Drilling on Georges Bank: A State's Perspective."* In: R. Bachus (Ed.) *Georges Bank* (Cambridge, MA: The MIT Press). in press.

Lahey, William L. 1985. *"Waterfront Development and the Public Trust Doctrine."* In: Massachusetts Law Review, Vol. 70. No. 2, pp. 55-66.

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